PT 97-34
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

SPRINKLER FITTERS APPRENTICES UNION LOCAL NO. 281, APPLICANT	)	**Docket No: 94-16-1423**
v.	)	**Real Estate Exemption for Part of 1994 Tax Year**
DEPARTMENT OF REVENUE STATE OF ILLINOIS	)	**P.I.N.: 24-28-102-029**
	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Jack Cahill of John P. Fitzgerald, Ltd. appeared on behalf of the Sprinkler Fitters and Apprentices Union Local No. 281.

SYNOPSIS: This proceeding raises the issue of whether real estate assigned Permanent Index Number 24-28-102-029 by the Cook County Board of Tax Appeals qualifies for exemption from 1994 real estate taxes under 35 **ILCS** 200/15-35.[1] In relevant part, that provision exempts:

> All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit.

The controversy arises as follows:

On March 29, 1995, the Sprinkler Fitters and Apprentices Union Local No. 281 (hereinafter "Local 281" or the "applicant") filed a real estate exemption

[1]. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (hereinafter "Bracher"), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 **ILCS** 200\1-1 *et seq*).

complaint with the Cook County Board of Tax Appeals (hereinafter the "Board"). Said complaint alleged that the subject parcel was exempt from real estate taxation under 35 **ILCS** 205/19.1 and 205/19.7[2]

The Board reviewed applicant's complaint and recommended to the Department of Revenue (hereinafter the "Department") that the requested exemptions be denied. On December 22, 1995, the Department accepted this recommendation by issuing a certificate finding that the property did not satisfy the appropriate ownership and use requirements. (Dept. Ex. No. 2).

Applicant filed a timely request for hearing on January 5, 1996. (Dept. Ex. No. 3). After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on August 20, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel not be exempt from 1994 real estate taxes.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt ownership and not in exempt use during the 1994 assessment year, are established by the admission into evidence of Dept. Ex. No. 2.

2. The subject parcel is located at 11900 South Laramie Ave., Chicago, IL 60658. It is identified by Permanent Index Number 24-28-102-029 and improved with two buildings. The first (hereinafter referred to as the "main building")

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[2].Section 19.1 of the Revenue Act of 1939 (35 **ILCS** 205/1 *et seq*.) exempted "school property[,]" while Section 19.7 of that same statute exempted property owned by "institutions of public charity[.]" Both provisions are, for present purposes, substantially similiar to those contained in Sections 200/15-35 and 200/15-65 of the Property Tax Code. However, applicant did not raise the charitable exemption issue in the Pre-Trial Order (Dept. Group Ex. No. 5) and limited its evidence and argument to the "school" exemption. Therefore, considerations of administrative and judicial economy mandate that further analysis and discussion of the charitable exemption be eliminated from this Recommendation.

In addition, the Bracher holding requires that this case be decided under the Property Tax Code. As such, I shall cite to the appropriate provisions of that statute throughout the remainder of this Recommendation.

is 1.5 stories tall and occupies 33,230 square feet. The second is a 1-story, 1,531 square foot storage building. (hereinafter referred to as the "storage building"). Dept. Group Ex. No. 1.

3. Local 281 obtained its ownership interest in the subject parcel (including both buildings) via a trustee's deed dated April 13, 1994. Applicant purchased the property because it required additional space to accommodate the growth of its local and programs associated therewith. Applicant Ex. No. 6; Tr. p. 27.

4. Local 281 also hoped that the purchase would enable applicant to improve its journeyman training program. Local 281 had been unable to make such improvements before the purchase for logistical reasons. However, it did not actually undertake any improvements during the 1994 assessment year. Tr. pp. 27, 43.

5. On May 1, 1994, applicant entered into a lease with the Joint Apprentice Committee (hereinafter the "Committee"). This lease runs from May 1, 1994 through April 30, 2004 and provides, *inter alia*, that:

> A. The demised premises consist of 25,546 square feet of the ground floor in the main building and 1,492 square feet in the mezzanine level of same;
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> B. The Committee is to use the space it leases for "[c]lassrooms, [s]chool and [a] [t]raining [c]enter ..." throughout the term of the leasehold, which runs from May 1, 1994 through April 30, 2004;
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> C. The Committee shall pay monthly rental of $5,000.00 plus an 81.3% pro-rated share of all operating costs.

Applicant Ex. Nos. 9, 10.

6. Applicant entered into another lease with a separate lessee, the Automatic Sprinkler Union Local 281 U.A. Welfare Fund [sic] (hereinafter the "Welfare Fund"), on May 1, 1994. This lease is not scheduled to expire until April 30, 1999 and covers 3,000 square feet of space on the first floor of the main building. Applicant Ex. Nos. 8 and 10.

7. The Welfare Fund uses the demised premises as office space. Its lease provides that the Welfare Fund is to pay monthly rental of $3,000.00 plus a 9.0% pro-rata share of all operating costs. Applicant Ex. No. 8.

8. Applicant is a nationally-chartered labor organization that is affiliated with the AFL-CIO. Its international union or United Association [capitalization as it is in transcript] consists of plumbers, pipe fitters and sprinkler fitters throughout the United States and Canada. Applicant Ex. No. 7; Tr. pp. 33.

9. Sprinkler fitters who belong to the International Association are responsible for installing and maintaining various types of fire suppression and sprinkler systems. Tr. p. 28.

10. Prospective sprinkler fitters must be at least 18 years of age, possess a high school diploma, take an aptitude test and submit to a selection process that includes an oral interview. Those selected for the program must then undergo a formal training process that begins with a five-year apprenticeship. Tr. p. 29.

11. The apprenticeship lasts a minimum of 10,000 hours. It entails at least 1,080 hours of formal coursework and not less than 32 hours per week of on-the-job training, during which they earn a starting wage of $10.30 per hour. This equals 40% of journeyman's hourly wage, which is $26.32. Tr. pp. 29 - 30.

12. Apprentices continue to earn the same starting wage throughout the first six months of their apprenticeships. They then earn 50% of a journeyman's hourly wage during the next six months and 55% of same throughout their second year. These wages increase throughout the third and subsequent years until the apprentice earns journeyman's wages. Tr. pp. 30 - 31.

13. Apprentices complete their coursework requirements by attending the training center which is located in that portion of the main building which applicant leases to the Committee. Applicant Ex. No. 9; Tr. pp. 29-30.

14. Apprentices attend the training center at least one day per week over a period of three years and three months. Their instructors are required to undergo and complete a five year training program given under the auspices of applicant's international union. Applicant Ex. No. 9; Tr. pp. 29 - 30, 33.

15. Instructors who complete the program are awarded teaching certificates in technical courses. These certificates enable the instructors to teach in applicant's training program and take other courses offered by the United Association. Tr. p. 33.

16. The training program itself consists of the following units, each of which consists of various lessons and an examination:[3] Introduction to Automatic Sprinklers; Sprinkler System Calculations; The Sprinkler Head; Underground Piping For Fire Sprinklers; Sprinkler System Water Supply; Reading Automatic Sprinkler Piping Drawings; Types of Fire Protection Systems; Installation of Sprinkler Systems; Use and Care of Tools; Sprinkler System Alarms; Job Safety Awareness; Residential Sprinkler Systems; Valves and Devices; and Hydraulics. Applicant Ex. No. 12.

17. During the first year, the apprentices' coursework is geared toward the following objectives: obtaining an awareness of the history and heritage of the pipefitting trade; instruction in the identification, use and proper care of appropriate tools; training and development of skills necessary to install all types of pipe, tubes, fittings and valves; obtaining an understanding of job safety and health requirements; training in soldering, brazing, oxy-aceltyne cutting; instruction in the fundamentals for solving math problems and the necessary math for taking pipe measurements; achieving knowledge of rigging and signaling; and finally, developing the ability to understand technical and isometric drawings. Applicant Ex. No. 13.

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[3]. For detailed information about each unit, *see*, Applicant Ex. No. 12.

18. Objectives for the second year include the following: an introduction to matter, liquids, hydraulics and the science required to understand the work of the pipe trades; the ability to understand building plans and drawings; instruction in basic electricity and its practical application on the job; and, training in shielded metal arc welding. *Id*.

19. Third year objectives are as follows: advance instruction in electricity; introduction in the theory and installation of pumps and steam systems; an introduction to the components and devices of the refrigeration system; necessary instruction in refrigeration to prepare for installation and service work; and, instruction concerning boilers and hydronic heating systems. *Id*.

20. Additional objectives for subsequent coursework include: training in pipe drafting and blueprint reading, instruction concerning hydronic heating and cooling systems; instruction in air conditioning, including an understanding of heat, humidity, air requirements and fans; training and use and operation of pneumatic controls; developing a knowledge of the operation and application of electric controls; an introduction to industrial pipefitting and power piping; instruction in the field of start, test and balance; developing knowledge of the mechanical instrument family; and an opportunity to become familiar with the use of the Builder's Level-Transit. *Id*. [Capitalization is as it appears in the original document].

21. Apprentices who complete their coursework and fulfill their on-the-job training requirements receive journeyman's certificates that enable them to work unsupervised for various contractors, of which there are 65 in the Chicagoland area.Tr. p.30.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting Cook County Parcel Number 24-28-102-029

from 1994 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the said parcel does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-35 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq*. The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-35. In relevant part, that provision exempts the following:

> All property donated by the United States for school purposes and all property of schools, not sold or *leased or otherwise used with a view to profit*. (emphasis added).

35 **ILCS** 200/15-35.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987), (hereinafter "GRI"). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption and have required such party to prove by clear and convincing evidence that it falls within the appropriate statutory exemption. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

An analysis of whether this applicant has met its burden of proof begins the following definition of "school[,]" originally articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), (hereinafter "McCullough"), which Illinois courts have used to analyze claims arising under Section 200/15-35 and its predecessor provisions:[4]

> A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

McCullough at 137. *See also*, People v. Trustees of Schools, 364 Ill. 131 (1936); People ex rel Brenza v. Turnverein Lincoln, 8 Ill. 2d 188 (1956), (hereinafter "Brenza"),

[4]. As noted in footnote 1, only the Property Tax Code, **35 ILCS 200/1-3 *et seq***, governs disposition of the instant case. However, it should be noted that the Revenue Act of 1939, **35 ILCS 205/1** *et seq*, contained statutes governing property tax exemptions for the 1992 and 1993 tax years. The exemption provisions for tax years prior to 1992 were contained in Ill. Rev. Stat. 1991 par. 500 ***et seq***. These provisions, as well as their predecessors, were repealed when the Property Tax Code took effect January 1, 1994. *See*, 35 **ILCS** 200/32-20.

One must also recognize the economically-based policy rationale whereby our courts have justified the exemption of "schools[.]" This rationale, best articulated in Brenza, *supra* is as follows:

> It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by publicly supported schools, academies, colleges and seminaries of learning and which, to some extent, thereby lessen the tax burden imposed upon our citizens as the result of the public educational system.

Brenza at 202-203.

Subsequent decisions have sought to enforce this rationale and the aforementioned definition of "school" by requiring private institutions, such as applicant, to prove two propositions by clear and convincing evidence: First, that applicants offer a course of study which fits into the general scheme of education established by the State; and second, that applicants substantially lessen the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961), (hereinafter "ICO"). *See also*, Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957), (hereinafter "Coyne Electrical"); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d. 59 (1st Dist. 1990); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991), (hereinafter "Winona").

In applying ICO and its progeny to the instant case, one must remember that the word "exclusively," when used in Section 200/15-35 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). One must also recognize that "[i]f real estate is leased for rent, whether in cash or other

form of consideration, it is used for profit." People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924) (hereinafter "Baldwin"). Thus, "[w]hile the application of income to charitable purposes aids the [purported] charity, the primary use of [the parcel in question] is for [non-exempt] profit." *Id*. *See also*, Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

The present record establishes that the main building occupies 33,230 square feet. Said record further verifies (via the leases admitted into evidence as Applicant Ex. Nos. 8 and 9) that applicant leases 30,038[5] square feet of this building to third parties. Given that the rented portion occupies 90.40% of the total available square footage in the main building,[6] I conclude that this structure is primarily used for non-exempt rental purposes. As such, Section 200/15-35(c), which exempts "property donated, granted, received or used for public school, college, theological seminary, university or other educational purposes," can not serve to exempt a property, such as the one at issue herein, which is not primarily used for those purposes. Under the same reasoning then, any arguments based on Section 200/15-35(b), which, in relevant part, exempts "property of schools on which the schools are located and any other property of schools *used exclusively for school purposes*," (emphasis added), must fail.

One might argue that the lessee's interest serves to exempt the demised premises under Sections 200/15-35(b) and/or 200/15-35(c). However, the lessee is not the applicant herein. Moreover, the lessee and the applicant are

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5. I derived the 30,038 figure by adding the space leased to the Committee (25,546 on the main floor + 1,492 on the mezzanine = a total of 27,038) to the 3,000 square feet leased to Welfare Fund. Thus, 25,546 + 1,492 + 3,000 = 30,038.

6. I derived the 90.4% figure by dividing the 30,038 figure computed above by the total square footage of the main building. Thus, 30,038/33,230 = .90394 (rounded) or 90.40%.

separate legal entities which use the main building for distinctly different purposes. Consequently, Local 281, which does not operate the training program but rather uses the main building exclusively for non-exempt rental purposes, lacks standing to raise the instant exemption complaint on its lesee's behalf. *See*, Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1991).

Applicant refutes the preceding analysis by relying on the criteria set forth in ICO. While ICO and its progeny provide guidelines for analyzing educational exemption claims, those criteria assume (if not require) that the subject parcel is being exclusively used for "school" purposes. Thus, these cases bar exemption where, as here, applicant's use of the main building is primarily that of a non-exempt landlord. Therefore, Local 281's reliance on the ICO line of cases is misplaced.

It also does not appear that applicant would qualify for exemption under Section 200/15-35 even if this case were to be decided under the criteria established in ICO. That case involved a school of optometry, the practice of which had previously been held to fall within the General Assembly's regulatory police powers. ICO at 222, citing Babcock v. Nudelman, 367 Ill. 626; Klien v. Department of Registration and Education, 412 Ill. 75. Specifically, the court found that "it was the intention of the legislature to elevate the practice of optometry to that of a profession or skilled occupation, similiar to that of medicine, surgery or dentistry." *Id*.

Here, the General Assembly has enacted the Illinois Plumbing License Act, 225 **ILCS** 320/0.01 *et seq*. (hereinafter the "Act") and thereby subjected the design, installation and maintenance of certain sprinkler systems to the State's police powers. While I take administrative notice of this statute, Local 281's evidence fails to disclose that successful completion of the Committee's

training program satisfies the legislatively-established educational or apprenticeship requirements[7] for licensure thereunder.

At most, applicant's evidence establishes only that successful completion of the training program results in promotion to journeyman sprinkler fitter. It does *not*, however, explicitly or implicitly prove that those who complete the program are qualified to sit for the licensing examination mandated by Section 320/9 of the Act. In this respect, then, the present case is distinguishable from ICO, wherein successful completion the course of study enabled one to sit for the State-mandated examination for the profession of optometry.

In addition, both ICO and the economically-based policy considerations which provide theoretical support for the two-prong test articulated therein, require applicant to prove that the training program substantially reduces the public's tax burden. Applicant presented little evidence on this point, except to submit that the training program leads to employment as journeyman sprinkler fitters.

Such employment undoubtedly provides some relief to the taxpayers of this State. Nonetheless, the instant record contains evidence establishing that admission to the training program is not open to the general public, but rather, restricted to those who are selected via a screening process. More importantly, the record establishes that those admitted to the program are paid wages throughout the duration of their training and that such wages are directly tied to those of journeymen.

Given these considerations, I must conclude that the training program is inherently designed to teach certain skills to a select group of prospective union members. As such, its primary focus is providing training to these individuals rather than educating the general public. Consequently, any tax relief attributable to such training is incidental to that purpose and therefore legally insufficient to sustain applicant's burden of proof.

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[7]. These requirements, of which I take administrative notice, are found in Sections 320/10(c) through 320/10(e) of the Act.

It also bears noting that in Coyne Electrical, *supra*, the court based its decision to deny exemption in part on the fact that appellant's instructors were not qualified "to teach in common schools or high schools of this State." Coyne Electrical at 391. In this case, those who teach in the training program must complete a five year training program. Even though completion of this particular program enables the instructors to teach courses in the training program and take other advanced courses, the record fails to establish that it qualifies the instructors to teach in the public schools.

Moreover, the holding in Winona, *supra*, which denied exemption to applicant's private photography school pursuant to the analyses set forth in ICO and Coyne Electrical, was partially based on the court's finding that the record before it failed to establish that appellant offered any courses in general or adult education as required by the Public Community College Act.[8] Winona at 571.

The present record discloses that one unit of the Committee's training program is devoted to mathmatics, an area which is undoubtedly included within the State's general education scheme. Nevertheless, the record further establishes that all of the remaining units are devoted to technical or trade courses which, by their very nature, do not fall within same. Based on this and all the aforementioned considerations, I conclude that the training program does not qualify as a "school" within the meaning of Section 200/15-35. Therefore, the premises wherein the Committee conducts such training is not entitled to exemption from 1994 real estate taxes under that Section.

The preceding analysis does not address whether storage building should be exempted under the "reasonably necessary" standard enunciated in Memorial Chid Care v. Department of Revenue, 238 Ill. App.3d 985 (4th Dist. 1992), (hereinafter "MCM"). There, the court held that appellant's child care facility

[8]. At the time Winona was decided, that statute was found at Ill. Rev. Stat. ch. 122, par. 101-1 *et seq*. It is currently contained in 110 **ILCS** 805/1-1 *et seq*.

qualified for exemption on grounds that it furthered the exempt purposes of appellant's exempt affiliate, Memorial Medical Center. MCM at 991 - 993.

The instant matter is factually distinguishable from MCM in that here, the main building is primarily a rental property. As such, it is not in exempt use. Therefore, unlike MCM, (wherein Memorial Medical Center was conceded to have been used for exempt purposes), it is factually impossible for applicant to use the storage building in a manner that would facilitate exempt activity. Therefore, the Department's determination, dated December 22, 1995, which denied both the storage and main buildings located on Cook County Parcel Number 24-28-102-029 exemption from 1994 real estate taxes should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that the subject parcel not be exempt from 1994 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge